

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

EXPLORICA, INC.

Plaintiff,

v.

ELDERHOSTEL, INC.
d/b/a EXPLORITAS,

Defendant.

Civil Action No. 09-11719-RGS

PLAINTIFF EXPLORICA, INC.'S [PROPOSED] POST-TRIAL SCHEDULING ORDER

On February 23, 2010, the Court ordered the parties to submit a proposed schedule to address the remaining issues in the case. Explorica proposes a specific schedule below.

On November 3, 2009, Plaintiff Explorica, Inc. ("Explorica") moved for a preliminary injunction. In response, Defendant Elderhostel, Inc. ("Elderhostel") moved to enlarge time and for expedited discovery, which was granted on November 13. On January 22, 2010, the Court heard argument on the motion for preliminary injunction and on January 26 it ordered the parties to an expedited jury trial beginning February 16. On February 23, the jury issued a verdict in favor of the plaintiff Explorica.

There are two remaining issues: timing of injunctive relief and money damages. Given the jury verdict, Explorica believes that it is entitled to an immediate permanent injunction and it would like to avoid any further delay and expense. Explorica is prepared to address injunctive relief immediately and would like to be heard as soon as the Court is available.

With respect to damages, Elderhostel has had specific requests for damages discovery since at least January 27, 2010. Following the Court's January 26 Order setting an expedited trial, the parties agreed to exchange discovery informally. The next day, Explorica served

Elderhostel with an email request specifying the damages discovery requested. *See* Exhibit A (Jan. 27, 2010 Email from Counsel for Plaintiff to Counsel for Defendant) attached hereto.

Elderhostel did not respond to follow up requests, so Explorica served a Fed. R. Civ. P. 30(b)(6) deposition notice and document request on February 2. *See* Exhibit B (Notice of 30(b)(6) Deposition) attached hereto.

Elderhostel continued to refuse to produce damages discovery and a deponent and instead moved for summary judgment on damages, which Explorica timely opposed. *See* D.E. Nos. 54, 53, and 52.

In light of the foregoing, Explorica proposes that the parties exchange damages discovery and file short post-trial briefs. Specifically, Explorica proposes the following schedule:

- **March 5, 2010** – Elderhostel to produce damages documents;
- **March 10, 2010** – Explorica to complete Fed. R. Civ. P. 30(b)(6) deposition of Elderhostel concerning damages;
- **March 15, 2010** – Explorica to file 10 page brief concerning injunctive relief, damages, and exceptional case issues;
- **March 19, 2010** – Elderhostel to file 10 page response; and
- **March 22, 2010** (or earliest available date on the Court's calendar) – Hearing on post-trial issues.

Explorica and Elderhostel attempted to negotiate an agreed schedule; however, the parties were unable to reach an agreement concerning either the scope or timing of remaining issues. Given that nearly four months have passed since Explorica first sought preliminary relief and that the jury has now found in its favor, Explorica would like to proceed as quickly as possible.

Respectfully submitted,

EXPLORICA, INC.

By its attorneys,

/s/ Mark S. Puzella

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Dated: February 26, 2010

CERTIFICATE OF SERVICE

I, Mark S. Puzella, hereby certify that a true copy of this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on February 26, 2010.

/s/ Mark S. Puzella